

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANTHONY R. CARLUCCI and U.S. POSTAL SERVICE,
POST OFFICE, Boston, Mass.

*Docket No. 96-398; Submitted on the Record;
Issued June 12, 1998*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective April 2, 1995 on the grounds that he had no further disability causally related to his February 20, 1980 employment injury; (2) whether the Office properly terminated appellant's authorization for medical treatment; and (3) whether appellant has met his burden of proof to establish continuing disability after April 2, 1995 causally related to his accepted employment injury.

The Board has duly reviewed the case record and finds that the Office did not meet its burden of proof to terminate appellant's compensation benefits effective April 2, 1995 on the grounds that he had no further disability causally related to his February 20, 1980 employment injury.

In the present case, the Office accepted that appellant sustained a sprain of the left thumb, low back strain, left groin strain and synovitis of the left hip from a fall on February 20, 1980 and paid him appropriate compensation. The Office provided appellant with notice of the proposed termination of compensation benefits on January 11, 1995. By decision dated March 15, 1995, the Office terminated appellant's compensation effective April 2, 1995, and, by decisions dated September 5, 1995 and October 24, 1995, the Office denied appellant's requests for reconsideration on the grounds that the evidence submitted was insufficient to warrant modification of the prior decision.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.¹ After it has been determined that an employee has disability causally related to his or her employment, the Office may not terminate compensation

¹ Charles E. Minniss, 40 ECAB 708, 716 (1989).

without establishing that the disability has ceased or that it is no longer related to the employment.²

In reviewing the medical evidence of record, the Board finds that an unresolved conflict of medical opinion existed at the time that appellant's compensation benefits were terminated as to whether appellant's accepted conditions of low back strain, left groin strain and synovitis of the left hip had resolved.

Following his injury, appellant received treatment from Dr. John J. Walsh, Jr., a Board-certified orthopedic surgeon. In an office visit note dated December 13, 1993, Dr. Walsh noted that appellant "continues to ambulate with use of a can" and continued to require pain medication. In a work restriction evaluation dated February 4, 1994, Dr. Walsh found that appellant was totally disabled. In an office visit note dated June 9, 1994, Dr. Walsh noted that he had reevaluated appellant and that he continued on pain medication. In a work capacity evaluation dated January 26, 1995, Dr. Walsh found that appellant remained totally disabled.

In a report dated December 22, 1994, Dr. Philip I. Salib, a Board-certified orthopedic surgeon and Office referral physician, reviewed the medical evidence of record, appellant's physical complaints and his history of injury. On physical examination, Dr. Salib found "a localized tender fatty mass" which he found was not related to the accepted employment injury but could cause low back pain. The physician found "no signs of disc injury or serious problem with the lower back, nor are there positive objective findings to confirm any." He diagnosed a completely recovered sprain of the left thumb, pain in the left lower back pain with radiation to the left groin and subjective complaints of the left hip, old degenerative arthritis of the spine and degenerative disc disease, and obesity. Dr. Salib concluded that appellant had no further residuals of his employment injury and that he could resume his regular employment without restrictions.

The Board has carefully reviewed the opinion of Dr. Salib and finds that it is insufficient to establish that appellant has no residuals of his accepted employment-related conditions, especially in view of appellant's attending physician's finding that he remains totally disabled. Dr. Salib did not discuss appellant's use of a cane to walk and offered no explanation why the subjective pain in appellant's hip which he diagnosed was not causally related to the accepted injury.³

Given the limited probative value of Dr. Salib's opinion, there continues to be a conflict in the medical evidence over whether appellant has any continuing condition or disability due to his accepted February 20, 1980 employment injury. The Board notes that, since the Office relied upon the opinion of Dr. Salib to terminate appellant's compensation benefits effective April 2, 1995 without having resolved the existing conflict, the Office failed to meet its burden of proof in terminating appellant's compensation.

² *Id.*

³ In view of the Board's disposition of the Office's termination of appellant's benefits, the issue of whether appellant has met his burden of proof to establish continuing disability after April 2, 1995 is moot.

The decisions of the Office of Workers' Compensation Programs dated October 24, 1995, September 5, 1995 and March 15, 1995 are hereby reversed.

Dated, Washington, D.C.
June 12, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member